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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. 331

ELLA G. WOOD, *Petitioner,*

vs.

THE FEDERAL LAND BANK OF OMAHA, NEBRASKA, et al, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

IN BANKRUPTCY

ELLA G. WOOD, *Petitioner,*

vs.

THE FEDERAL LAND BANK OF OMAHA, NEBRASKA, et al, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Harlan F. Stone, Chief Justice, and to the Associate Justices, of the Supreme Court of the United States:

Your petitioner, Ella G. Wood, respectfully petitions this Honorable Court for a writ of certiorari to review the decision and judgment of the United States Circuit Court of Appeals for the eighth circuit, rendered in the above entitled cause on July 10th, 1942. Which decision reverses the judgment of the United States District Court of Nebraska, Omaha Division, and holds that petitioner is not a farmer within the definition of Section 75r of the Bankruptcy Act.

CIRCUIT COURT'S OPINION

The opinion of the Circuit Court of Appeals has not yet been reported, but it is printed herein in the appendix, together with the opinion of the District Court of Nebraska.

SUMMARY STATEMENT OF MATTER INVOLVED.

This cause concerns the proper construction and interpretation of Section 75r of the Bankruptcy Act, 11 U.S.C.A., Section 203r and its application to the facts in the record.

Petitioner is the owner of the real estate involved, and respondents are the mortgages. Tr. 19.

Petitioner bought these lands through her sister, Sarah Norton, sometime between 1932 and 1933. At the time she bought them they were mortgaged to the respondents and were in foreclosure. Tr. 122-123, incl.

Thereafter, petitioner took advantage of the State Moratorium and a receiver was appointed for the 477 acres she owned in Coral and Green Counties, Iowa. Tr. 122 and 113.

On January 20th, 1940, petitioner filed her petition for a composition or extension under Section 75 a to r of the Bankruptcy Act. Tr. 1-4.

On July 22nd, 1940, petitioner being unable to get a composition or extension, amended her petition and asked to be adjudged a bankrupt under Section 75r, and was adjudged a bankrupt by the District Court of Nebraska, Omaha Division, on July 24th, 1940. Tr. 26-30.

On April 19, 1941, the District Court referred this cause to the Supervising Conciliation Commissioner at Omaha, *to determine the fact and law as to the status of the debtor, Ella G. Wood, as a debtor farmer* under Section 75r (11 U.S.C.A. 203-r) Tr. 36. The Supervising Conciliation Commissioner on September 27th, 1941, made his report finding Ella G. Wood not a farmer, and recommended a dismissal of the proceedings. Tr. 226-243.

The petitioner debtor filed her exceptions to the findings and recommendations of the Supervising Conciliation Commissioner. Tr. 244-237.

November 29th, 1941, the trial court after full hearing and argument on the debtor's exceptions, *found and determined the petitioner, Ella G. Wood, a farmer debtor under the*

bankruptcy act and entitled to the benefit of the Frazier-Lemke Act. Tr. 248-255. For opinion see appendix page 15.

On July 10th, 1942, the Circuit Court of Appeals of the Eighth Circuit reversed the decision of the District Court of Nebraska, and held that the petitioner, Ella G. Wood, was not a farmer within the definition of 75r (11 U. S. C. A. 203-r). For the Circuit Court's opinion see appendix, page 21.

It is this decision we ask to have reviewed by this court.

JURISDICTION

The jurisdiction of this court is sought to be invoked under the provisions of Section 347 of the Judicial Code, as amended by the act of February 13th, 1925, (28 U.S.C.A. 347).

In view of the importance of the question with respect to proceedings instituted under Section 75 of the bankruptcy act, and because a liberal and proper construction of Section 75r is necessary to carry out the intent of Congress, a writ of certiorari should be granted. Wright vs. Bank, 300 U. S. 440. Adair vs. Bank, 303 U. S. 350. First National Bank vs. Beach, 301 U. S. 335. John Hancock Insurance Company vs. Bartels, 308 U. S. 180.

STATUTE INVOLVED

"75r For the purposes of this section, and Section 4 (b) the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. The decision of the Circuit Court of Appeals is in conflict with the decisions of many District Courts, and with the spirit of the decisions of this court in the above cited cases, and does violence to the intent of Congress. It is in conflict with the Hamburg Bank vs. Kitchens 116 F. (2) 276, a decision of its own circuit, the eighth. It gives a strict construction against the very persons for the benefit of whom the remedial statute was passed, rather than a liberal construction in favor of such persons. It goes far to annul the purpose of Congress when it passed Section 75 of the Bankruptcy Act, and especially sub section 75r.

2. The decision of the Circuit Court involves the proper interpretation of Section 75r of the bankruptcy act as amended, which has not heretofore been decided by this court. It is of general public concern. It does not follow the reasoning set forth in the Beach case decided by this court. The decision of the Circuit Court of Appeals overlooks the facts established and found by the trial court, and draws conclusions not warranted by the evidence in the record, or by law. It assumes erroneously that income paid to a receiver in charge of the farmer bankrupt's property, is not income of the debtor. It ignores the lower court's finding on this subject.

3. The decision of the Circuit Court involves the proper construction of Section 75r as applied to the facts established and found by the trial court and sustained by the evidence in the record.

Wherefore, your petitioner prays that a writ of certiorari issue under the Seal of this court directed to the United States Circuit Court of Appeals, Eighth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in the above entitled cause, being numbered 12,235 on its docket, to the end that this cause may be reviewed and determined by this Honorable Court, as provided

for by Section 347, Title 28, U.S.C.A.; and that the judgment herein of said Circuit Court of Appeals be reversed by this Honorable Court; and for such further relief as this court may deem proper.

Ella G. Wood, Petitioner

William Lemke, Counsel for Petitioner.